

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDALL HAYES

Claimant

APPEAL 20A-UI-11053-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS LLC

Employer

OC: 04/12/20

Claimant: Respondent (2-R)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On September 10, 2020, Lowe's Home Centers, LLC (employer) filed an appeal from the September 1, 2020, reference 02, unemployment insurance decision that allowed benefits based upon the determination Randall Hayes (claimant) did not quit but was discharged and the employer failed to show it was for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on October 28, 2020. The claimant participated personally. The employer participated through Bobbi Weepie, Operations/Assistant Manager. The Employer's Exhibit 1 was admitted into the record over the claimant's objections that he did not know what information the documents contained. The claimant had received the documents prior to the hearing, but did not carefully review the documents or have them with him at the time of the hearing. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history and the fact-finding documents.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

Has the claimant been overpaid Federal Pandemic Unemployment Compensation (FPUC) and must those benefits be repaid?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Delivery Driver beginning on February 25, 2020, earning \$19.75 an hour. The employer has a policy stating an employee who does not show for work or notify them of the absence for three consecutive shifts will be considered to have voluntarily quit employment.

The claimant's last day worked was April 14, after which he began a two-week leave of absence due to illness. During the week ending April 18, the claimant was paid for 22.29 hours of work or \$440 in gross wages. The following week while still on leave, he was paid for 32 hours, and he received \$632 in gross wages.

The claimant believed he had properly filed for a two-week extension to continue his leave until May 12. However, the week of May 2, the claimant realized that the employer was not reporting any hours and he would not receive pay for his second two weeks of his leave. He contacted the employer who told him there was an issue with his paperwork. The claimant told the employer that the issue was on their end; and, the employer told the claimant that it was an issue he needed to correct. The employer anticipated he would be approved for the extended leave once he filled out the required paperwork, and they expected him to return May 12, knowing the leave request would be backdated, if needed.

On May 10, the employer had not received notification that the claimant had been officially approved for an extended leave; therefore, they did not enter any hours for the claimant to be paid. The claimant could see on the employer's payroll system that they had not entered any hours and he would not be paid for leave. He notified the employer that if they did not pay him for the leave then he would not return. The employer told him that if he failed to report on May 12, his employment could be in jeopardy. The claimant never submitted the appropriate documentation and did not return to work on May 12. The claimant was scheduled for six subsequent shifts for which he did not report. The employer determined the claimant had voluntarily quit his employment.

The claimant filed his claim for unemployment insurance benefits effective April 12. He only reported \$138 in wages earned while filing his weekly claims. The claimant received \$5,366.35 in regular unemployment insurance benefits and \$9,000 in Federal Pandemic Unemployment Compensation (FPUC). The employer did not participate in the fact-finding interview or respond to the fact finder's request for additional information.

Whether the claimant accurately reported wages earned from April 12 through April 25 and whether he accurately reported his ability to and availability for work from April 12 through May 16 when filing his weekly claims have not yet been investigated or adjudicated by the Integrity Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the claimant was not discharged, but voluntarily quit without good cause attributable to the employer. Benefits are denied. The claimant will not be required to repay the regular unemployment insurance benefits at this time because the employer did not participate in the fact-finding interview and its account shall be charged. However, he will be required to repay the FPUC benefits he received.

- 1. Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?*

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

...

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

...

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the

employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The employer has met the burden of proof to establish that the claimant voluntarily quit employment. The claimant expressed an intention that he may not return on May 12 and then he did not report that day. The claimant had the option of remaining employed, but elected to end his employment. The burden then shifts to the claimant to prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The claimant has not met the burden of proof to establish that he voluntarily quit with good cause attributable to the employer. The claimant contends he left because the employer did not pay him for his leave. The employer contends the claimant did not properly complete the paperwork that would allow him to be paid for his absence. The claimant, who has the burden of proof to show he quit for good cause, did not submit any additional evidence that he properly completed the paperwork. Additionally, this is not a case of an employer failing to pay an employee for work they performed, which would cause the employee to question whether they would be paid for work in the future. This was, at most, a miscommunication over two weeks of paid leave, an optional benefit offered by the employer, and was not an ongoing situation.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. As the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer’s policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Accordingly, benefits are denied.

II. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and the employer’s account charged?

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or

adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10(1) provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871-subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

As the claimant's separation was disqualifying, benefits were paid to which he is not entitled. The employer did not provide a person to participate in the fact-finding interview and did not respond to the questionnaire sent by the agency. Since the employer did not participate in the

fact-finding interview, the claimant is not obligated to repay to the agency the regular unemployment insurance benefits at this time and the employer's account shall be charged.

However, the issues of whether the claimant has been overpaid benefits because he did not accurately report wages earned or that he was not able to and available for work is remanded to the Integrity Bureau for investigation. If it is found that the claimant willfully provided incorrect or fraudulent information while filing his weekly claims, he may still have to repay the regular unemployment insurance benefits he received.

III. Has the claimant been overpaid FPUC and must the benefits be repaid?

PL116-136, Sec. 2104(b) and (f)(2) provide, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Since the claimant is not eligible for regular unemployment benefits, he is not eligible for FPUC. While Iowa law does not require a claimant to repay regular unemployment insurance benefits when the employer does not participate in the fact-finding interview, the CARES Act makes no such exception for the repayment of FPUC. Therefore, the determination of whether the claimant must repay FPUC does not hinge on the employer's participation in the fact-finding interview. The claimant was overpaid \$9,000 in FPUC from April 12 through July 25. He will be required to repay the benefits received unless this decision is overturned or he is found eligible for Pandemic Unemployment Assistance (PUA).

Whether the claimant has been overpaid Pandemic Emergency Unemployment Compensation (PEUC) as a result of this decision, and if he is required to repay the federal benefit is remanded to the Benefits Bureau for review and an unemployment insurance decision.

DECISION:

The September 1, 2020, reference 02, unemployment insurance decision is reversed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid \$5,366.35 in regular unemployment insurance benefits; however, he is not obligated to repay the agency those benefits at this time because the employer did not participate in the fact-finding interview and its account shall be charged. The claimant has been overpaid \$9,000 in FPUC, and he is required to repay those benefits.

REMANDS:

The issues of whether the claimant accurately reported wages earned from April 12 through April 25 and whether he accurately reported his ability to and availability for work from April 12 through May 16 when filing his weekly are remanded to the Integrity Bureau for investigation.

The issues of whether the claimant has been overpaid Pandemic Emergency Unemployment Compensation (PEUC) as a result of this decision, and if he is required to repay the federal benefit are remanded to the Benefits Bureau for review and an unemployment insurance decision.



Stephanie R. Callahan
Administrative Law Judge

November 3, 2020
Decision Dated and Mailed

src/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.